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In re Application of	:	
CONNOLLY et al.	:	DECISION ON
Application No.: 09/701,739	:	
PCT No.: PCT/IE99/00049	:	PAPERS
Int. Filing Date: 03 June 1999	:	
Priority Date: 03 June 1998	:	
Attorney's Docket No.: P66063US0	:	UNDER 37 CFR 1.42
For: A THERAPEUTIC BED	:	

This is a decision on applicants' "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" filed 28 June 2001, which has been treated as a request for acceptance of the application filed on behalf of a deceased inventor under 37 CFR 1.42.

### BACKGROUND

On 03 June 1999, applicants filed international application PCT/IE99/00049, which claimed a priority date of 03 June 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 09 December 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 20 December 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 December 2000 (03 December 2000, being Sunday).

On 04 December 2000, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date.

On 29 December 2000, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors was required. This Notification set a one month extendable period for reply.

On 28 June 2001, applicants submitted the instant "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371", which was accompanied by, *inter alia*, a petition/fee for a five month extension of time, a declaration of the inventors, an "ADDED PAGE TO COMBINED DECLARATION AND POWER OF ATTORNEY . . . INVENTOR (37 CFR 1.42 AND 1.43), a copy of a district probate registry, and a copy of the last will and testament of Patrick Connolly.

### DISCUSSION

The "ADDED PAGE . . ." filed 28 June 2001 states that Una Connolly is the "legal representative (or heirs) of Patrick Joseph Connolly." Thus, it is not clear whether Una Connolly is signing as the legal representative, as an heir, or as the sole heir. The copy of the will and the copy of the district probate registry appear to have been filed under 37 CFR 1.44 to satisfy the proof of authority. However, the proof requirement under 37 CFR 1.44 was deleted as to all pending papers under 37 CFR 1.42 that had not had the proof requirement satisfied as of 08 September 2000. 54604 **Federal Register**, Vol. 65, No. 175, Friday, September 8, 2000, 54618.

Under 37 CFR 1.42, the declaration must include the signature of the legal representative or the signature of all of the heirs (or if there is only one heir, the sole heir). If the declaration is signed by a legal representative, the declaration should state that this person is the legal representative. Alternatively, applicants' attorney may file a statement certifying that the person signing is the legal representative. If the declaration is not signed by a legal representative and does not indicate that the persons signing are all of the heirs (or the sole heir), then it must be accompanied by a statement by either those signing or by the attorney which sets forth (1) that they are in fact all the heirs of the deceased and (2) that no legal representative of the deceased's estate has been appointed or is required by the applicable law to be appointed.

It is also noted that the declaration filed 28 June 2001 fails to comply with 37 CFR 1.497(a)-(b) because it does not include the residence, mailing address and citizenship of the person(s) signing on behalf of the deceased inventor (in addition to the full name and citizenship of the deceased inventor). See 37 CFR 1.497(b)(2).

### CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. **THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.** Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under

37 CFR 1.42."

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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